



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 967 OF 2012

[Formerly Eldoret Hccc No. 164 of 2012]

CECILIA CHEPKOECH LETING.....1ST APPLICANT

MAUREEN CHEPTOO LETING.....2ND APPLICANT

ANTONIO KIPROP LETING.....3RD APPLICANT

[Suing as the executors of the Estate of JOSEPH TENDENEI ARAP LETING]

VERSUS

DAVID BISEM (*Suing as the administrator of the Estate of the*

late JOSIAM KIBISEM SANG – DECEASED.....RESPONDENT

RULING

Cecilia Chepkoech Leting, Maureen Cheptoo Leting and Antonio Kiprop Leting suing as the executors of the Estate of Joseph Tendenei Arap Leting (hereinafter referred to as applicants have brought the application dated 20.7.2017 against David Bisem (hereinafter referred to as the respondent) seeking orders that this Honourable court be pleased to order that the respondent be committed to civil jail for contempt for willful disobedience of the orders issued on 24th March, 2014 by Honourable Justice Sila Munyao for such a reasonable period as the court may deem fit.

That this Honourable court be pleased to order the office in charge, Lessos Police Station to arrest and produce the respondent in court for committal to civil jail. That the respondent does pay costs of this application.

The application is based on grounds that this court on the 24th March, 2014 issued orders restraining the respondent either by himself or his agents from trespassing, entering into, ploughing, erecting structures or in any other way interfering with the applicants' possession of the suit land being parcel Number Nandi Lessos/555 and Nandi Lessos/564 (hereinafter the "Suit land") till further orders of the court. That the court further directed that the officer in charge, Lessos Police Station do ensure the orders are obeyed.

That on the 23rd April 2014, the court further reiterated that the applicants herein do continue to occupy and utilize the suit land.

That on 29th April 2014, the orders were served upon the officer in charge, Lessos Police Station, one Mr. Moses Shikuku.

That in spite of the above, the respondent has trespassed into the suit land, ploughing and planting maize crops in defiance of protestations from the applicants to desist from the same.

That the police, in spite of persistent complaints from the applicants herein, have failed to ensure that the respondent abides by the court's orders.

That it is in the interest of upholding and maintaining the integrity and dignity of the court that the orders sought be granted in the face of the respondent's blatant disrespect and disobedience of this court's orders.

The import of the affidavit of Maureen Cheptoo Leting is that the respondent has continued to trespass on the land, cultivate and planted maize. The respondent has denied trespassing on the land and planting maize.

This court finds that the applicant has not discharged the burden of proof. The applicant has to prove beyond balance of probabilities and not beyond shadow of doubt that the respondent has trespassed. Other than allegations, there is no tangible evidence that the respondent has trespassed and planted in the suit properties. There is no Surveyor's report or a report by the Officer Commanding Lessos Police Station. I do find the application without merit and the same is dismissed with Costs.

Dated and delivered at Eldoret this 31st day of May, 2019.

A. OMBWAYO

JUDGE